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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2703 OF 2004

Ms. Samta Ramchandra Mandlik)
Real Sister of the Detenu -)
Sandip Ramchandra Mandlik,)
Aged 23 years, Occ.: Student)
Residing at Room No.9,Laljisingh)
Chawl, P.M. Road, Khothwadi,)
Santacruz (West), Mumbai - 54.) ... Petitioner
(Wife of Detenu)

Versus

1. Mr. M. N. Roy)
The Commissioner of Police,)
Mumbai.)

2. The State of Maharashtra,)
(Through the Secretary to the)
Government of Maharashtra))
Home Department, Mantralaya,)
Mumbai - 32.)

3. The Superintendent,)
Nasik Road Central Prison,)
Nasik.) ... Respondents

Mr. U.N. Tripathi i/b Mr. Chandrakant Talekar for the petitioner.

Mr. S.R. Borulkar, Public Prosecutor for the respondents-State.

CORAM: SMT. RANJANA DESAI &
D.B. BHOSALE, JJ.

DATED: 20TH JUNE, 2005.

ORAL JUDGMENT:- (**Per Smt. Ranjana Desai, J.**)

1. In this petition filed under Article 226 of the Constitution of India, the order of detention dated 21/9/2004 issued by respondent 1, the Commissioner of Police, Brihan Mumbai, in exercise of powers conferred on him by sub-section (2) of section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act,

1981 (for short, "the MPDA Act"), detaining one Sandip Ramchandra Mandlik (for convenience, "the detenu") under the provisions of the MPDA Act is under challenge.

2. The petitioner is the sister of the detenu. The order of detention is based on C.R. No.246 of 2004 registered under sections 324, 452, 427 and 114 of the Indian Penal Code (for short, "the IPC") at Santacruz Police Station on 1/7/2004 and two in-camera statements of witnesses "A" and "B" recorded on 23/8/2004 and 24/8/2004 respectively. On the basis of the said C.R., and the in-camera statements, the detaining authority was satisfied that the detenu is a dangerous person as defined in section 2(b-1) of the MPDA Act. In the grounds of detention, the detaining authority has concluded that the detenu is a weapon wielding desperado and a dreaded criminal. He strikes terror in the minds of peace loving and law-abiding citizens in the localities and areas of S.K. Compound, P.M. Road, Khotwadi, Santacruz (West), and areas adjoining thereto within the jurisdiction of Santacruz Police Station. The detaining authority has further recorded that the action taken under the normal law of the land is found to be insufficient and ineffective to deter the detenu from indulging in criminal activities prejudicial to the maintenance of public order. It is further stated that the activities of the detenu are disturbing the even tempo of life of citizens of the said localities. The detaining authority has noted that in view of the

activities of the detenu, it was found necessary to detain him under the provisions of the MPDA Act to prevent him from acting in such a prejudicial manner in future.

3. We have heard at considerable length, Mr. Tripathi, the learned counsel appearing for the petitioner. Mr. Tripathi has assailed the impugned order on two counts. Firstly, Mr. Tripathi submitted that the grounds of detention indicate instances which at the most affect the law and order and not the public order and, therefore, it was wrong on the part of the detaining authority to issue the impugned order of detention on the basis thereof. In this connection, the learned counsel relied on the judgments of the Supreme Court in **Ajay Dixit v. State of U.P. and others, AIR 1985 SC 18,** and **State of U.P. v. Kamal Kishore Saini, AIR 1988 SC 208.** The second submission of Mr. Tripathi is that at the instance of the detenu, a non cognizable complaint was lodged at the Santacruz Police Station, which was numbered as N.C. Complaint No.1576 of 2004. The said N.C. complaint is a vital and material document. It is in the nature of a cross case. Mr. Tripathi urged that that being a vital document, the sponsoring authority ought to have placed it before the detaining authority as it would have affected the satisfaction of the detaining authority.

4. None of the submissions of Mr. Tripathi impress us. We will take up his first submission viz. that the

grounds of detention do not indicate any instances which affect the public order.

5. Mr. Tripathi's main contention is that the incident in respect of which C.R.No.246 of 2004 is registered, took place at 1.30 at night. He submitted that it took place within four walls of the United Bakery. At the most, the persons working in the bakery could be said to be affected thereby. This is not a case where a large section of people was affected. The sponsoring authority has not placed before the detaining authority any statement of the members of public which would have indicated that public order was affected. The learned counsel urged that this incident was the outcome of previous enmity. He submitted that a specific ground is taken in the petition to which there is no acceptable answer that the condition of the mother of the co-detenu Rakesh, who was suffering from Asthma was critical because of the fumes coming out from the bakery. In respect of this, a complaint was lodged at the Santacruz Police Station by the detenu and others being N.C. No.1576 of 2004 against the bakery people. It is because of this complaint that a false complaint was recorded against the detenu and others by the bakery owner. Mr. Tripathi contended that this incident was confined to individual persons and was a private crime as distinguished from public crime and it was wrong to include this incident in the grounds of detention. Mr. Tripathi also urged that the statement of witnesses "A"

and "B" are also sterio-type statements. They do not indicate that on account of the detenu's activities, the public order was disturbed.

6. Whether an incident affects public order or not must depend on the facts and circumstances of each case. It is the length, magnitude and intensity of terror wave unleashed by a particular eruption of disorder that helps distinguish it as an act affecting public order from that concerning law and order. The distinction between the areas of law and order and public order is one of degree and extent of the reach of the act in question on society. It is potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order. There can be no doubt that if the contravention in its effect is confined only to a few individuals directly involved as distinguished from a wide spectrum of the public, it would raise a problem of law and order only. But, if the terror wave created by the incident affects a large section of people it must be said that the even tempo of the society is disturbed. Such an incident would definitely affect the public order. The judgments cited by Mr. Tripathi lay down these principles. We can hardly dispute them. The question is whether in the facts of this case, it could be said that the detenu's activities have unleashed a terror wave in the concerned area affecting public order.

7. It is true that the incident took place at night but it must be remembered that the detenu and his associates had entered the bakery in which at the relevant time the workers were present. It appears from the complaint filed by Firoz Jamil Ansari, one of the workers of the bakery, that the detenu and his associates came in front of the door of which a shutter was kept open. The detenu's associate Rakesh More abused the complainant and asked him to come out. The complainant came out and asked him as to why he was abusing him. Upon which, the said associate of the detenu again abused and asked for a soda water bottle. Since the detenu's associate was under influence of alcohol, the complainant refused to give the soda water bottle and went inside the furnace room. The detenu and his associates followed him and entered the furnace room and started throwing tin trays here and there. The detenu picked up one wooden plank from the bakery and assaulted the complainant on his left ear and left cheek. On seeing this, the workers came to intervene. When the detenu's another associate Sanjay threatened them that he would assault them also, if they would intervene, due to fear, the workers kept mum. Thereafter, the detenu and his associates started hammering by wooden planks on the latch of the inside door and broke it down and went to the cash counter, and broke the glasses of the counter and shelf and broke the glass jars by throwing them on the ground as well as by throwing the wooden planks on them. They scattered the articles in the bakery and went away by threatening the

complainant and his workers. While going away, the detenu and his associates picked up the burning wooden planks from the furnace and threatened the members of public, who had gathered outside the bakery, on hearing the commotion in the bakery. Due to the threats, the members of public ran away helter skelter. Thereafter they left the place by brandishing the burning wooden planks.

8. There can be no manner of doubt that this incident had affected public order. The detenu and his associates did not restrict their activities within the four walls of the bakery but while leaving the bakery they threatened the members of public by brandishing burning wooden planks. In our opinion, an incident of this type which had taken place at 1.30 at night in a busy locality of Mumbai, would certainly unleash a wave of terror in general public. If this incident is examined in the light of the judgments cited by Mr. Tripathi, we must conclude that it affects the public order.

9. Apart from this incident, the statements of witnesses "A" and "B" which were before the detaining authority also establish that the detenu is a dangerous person and he is indulging in activities which affect the public order. It appears that the detenu and his associates are known in the concerned localities as criminals. The detenu and his associates are jobless and they threaten the shop keepers and collect hafta. Two in-camera

statements and the first incident establish that the detenu is a dangerous person within the meaning of the MPDA Act and his activities have affected the even tempo of life of the society. The order of detention based on them is, therefore, perfectly justified and legal.

10. We also do not find any substance in the submission of Mr. Tripathi that the N.C. complaint filed by the detenu being N.C. No.1576 of 2004 is a vital and material document and it ought to have been placed before the detaining authority. Similarly, we reject the submission that N.C. No.1579 of 2004 is a vital and material document and it was necessary to place it before the detaining authority. What is stated in the petition is that it was because the condition of the co-detenu's mother, who was suffering from Asthma was critical on account of fumes emanating from the bakery that the detenu and co-detenu had requested the bakery people to take steps to stop the smoke from coming out. The bakery people did nothing about it. Instead they started quarrelling and manhandling the detenu and the co-detenu. The detenu's people, therefore, rushed to the Santacruz Police Station and lodged N.C. complaint No.1576 of 2004. We have been shown a copy of N.C. complaint No.1576 of 2004. The N.C. complaint is registered by the detenu's associate Rakesh More. It is recorded in the complaint that the complainant went to ask for a cold drink at the United Bakery. However, the workers of the bakery refused to give the cold drink to the complainant.

When the complainant asked them as to why they were not giving him cold drink, the workers abused him. The averments made in the petition are not consistent with this complaint. Mr. Borulkar, the learned Public Prosecutor has also drawn our attention to yet another N.C. complaint No.1579 of 2004. This N.C. complaint is lodged at about the same time when N.C. complaint No.1576 of 2004 was lodged. In this complaint, the complainant, who is the employee of the bakery, has stated that the detenu's associate Rakesh More had come to the bakery. The complainant refused to give him cold drink. He abused the complainant and started beating him and caused damage to the shop. After reading the text of the N.C. complaints, we are of the opinion that the case made out by the petitioner in the petition is not truthful. When it is alleged that a particular document is a vital document and hence it was necessary to place it before the detaining authority, it is necessary for the petitioner to produce the said document before the court if possible and if it is available so that the court can ascertain whether it is a vital document or not. This court in **Smt. Sharifa Abubaker Zariwala vs. The Union of India & Ors., 1997 All MR (Cri) 528,** has made it amply clear that in all the relevant judgments of the Supreme Court, on this point, an area has been carved out for an enquiry by the court in each case to find out as to whether the material that has been withheld from the detaining authority and not considered by the detaining authority is vital and material for recording subjective satisfaction. We feel that it was therefore

necessary for the petitioner to either annex copies of the N.C. complaints to the petition or produce them in the court. Since the copies were not produced before us by the learned counsel for the petitioner, we had to call upon the learned public prosecutor to produce them. The reason as to why the copies are necessary to be produced in the court is clear from the fact that in this very petition, certain averments are made regarding the contents of the N.C. complaints which upon perusing the complaints are found to be incorrect. Therefore, the very basis of this submission has given way. Having perused the N.C. complaints, we are of the confirmed opinion that they cannot be called vital and material documents. In this connection, we may refer to the judgment of this court in **Arjun Ganpati Devendra v. M.N. Singh and others, 2002 Cr.L.J. 790** where this court was dealing with an order under the MPDA Act. It was argued that the documents in connection with C.R. No.39 of 2000 to which the reference was made in the grounds of detention were vital and material documents and, hence, they ought to have been placed before the detaining authority. This court rejected the submission. It was held that the law only requires that the vital documents should be placed before the detaining authority and vital documents mean documents, the perusal of which is necessary by the detaining authority in arriving at his subjective satisfaction to pass a detention order. On the facts before the court, this court held that the documents in connection with C.R.No.39 of 2000 were not vital and material documents and the reference made to them in the grounds of detention was only to complete the

factual narration. In this case, the N.C. complaints are not even referred to in the grounds of detention. The petitioner has incorrectly quoted the contents of his complaint and on that basis urged that the complaints are vital documents. Besides, we have found that they are not at all vital and material documents. Therefore, it cannot be said that non placement of these documents before the detaining authority has vitiated his satisfaction. We therefore, reject this submission. No other submissions were advanced by Mr. Tripathi. Moreover, even if it is assumed that the first ground is bad, the order can be sustained on the basis of the two incamera statements, which are separate grounds, on the basis of section 5A of the MPDA Act. In our opinion, the impugned order is perfectly justified. It is legal and valid and deserves to be confirmed and is confirmed as such. The petition is, therefore, rejected. Rule discharged.

11. All concerned to act on the authenticated copy of this order.

(SMT. RANJANA DESAI, J.)

(D.B. BHOSALE, J.)